

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Staff of the Missouri Public Service)
Commission)
)
Complainant,)
)
v.)
)
AT&T Corp.,)
)
Respondent.)

Case No. TC-2005-

STIPULATION AND AGREEMENT

This Stipulation and Agreement has been entered into between the Staff of the Public Service Commission of the State of Missouri ("Commission's Staff") and AT&T Corp., acting on behalf of itself and its affiliates (AT&T Corp. and its affiliates are referenced herein as "AT&T"), and is subject to approval by the Public Service Commission of the State of Missouri.

Since early 2004, the Commission's Staff has received a number of consumer complaints based on AT&T's imposition of a telephone service related monthly recurring charge of \$3.95. Effective January 1, 2004, AT&T added a \$3.95 monthly recurring charge to the residential telephone bills of AT&T long distance customers enrolled in AT&T's interstate Basic Rate plan. The monthly recurring charge was not to be imposed on the following classes of consumers: AT&T residential long distance customers who were enrolled in (1) one of AT&T's other domestic long distance calling plans; (2) AT&T's long distance "Lifeline" plan; or (3) any AT&T local service customer.

Prior to implementing the \$3.95 monthly recurring charge, AT&T (1) sent written notice to its customers upon whom it intended to impose the charge, (2) posted advance notice on its website, (3) filed a tariff with the Federal Communications Commission, and (4) published a service guide pursuant to its AT&T Consumer Service Agreement.

According to AT&T, due to coding and systems processing errors, as well as reliance on erroneous customer accounts record exchange ("CARE") data provided to AT&T and its affiliates from the consumer's LEC, AT&T billed the monthly recurring charge in error to certain of its residential long distance subscribers as well as to certain consumers who were not AT&T customers. AT&T represents and acknowledges that it erroneously charged 29,165 Missouri consumers the \$3.95 monthly recurring charge.

The Commission's Staff first received a consumer complaint regarding these billing errors in or about February 2004. On March 8, 2004 AT&T sent a letter via e-mail to the Commission's Staff alerting them to the potential for an increased volume of complaints due to AT&T's billing errors. Soon thereafter, the Commission's Staff contacted representatives of AT&T as part of its investigation. The Commission's Staff also contacted representatives in the Office of the Missouri Attorney General. During ensuing conversations and at subsequent meetings, AT&T provided the Commission's Staff and representatives of the Missouri Attorney General with information concerning the nature and scope of the issues underlying these billing errors.

Section 386.570 RSMo. 2000 provides:

386.570. 1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in

a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, ~~or any part or portion thereof~~, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

During the negotiations that resulted in this Stipulation and Agreement, the Commission's Staff considered numerous factors, including the number of affected Missouri consumers, the number of complaints received, AT&T's size, AT&T's financial status, AT&T's good faith in resolving the issues, the gravity of the issues, and the terms of AT&T's contemporaneous agreement made with the Missouri Attorney General under Missouri's merchandising practices laws, sections 407.010 RSMo. 2000 *et seq.*

In an effort to resolve, on an expeditious basis, all of the complaints that the Commission's Staff might raise to the Commission based on consumer complaints about AT&T's \$3.95 monthly recurring charge referenced above, including but not limited to complaints brought under section 386.570 RSMo. 2000, the Commission's Staff and AT&T agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Missouri Public Service Commission:

1. This Stipulation and Agreement does not constitute either an admission by AT&T or an adjudication on the merits or a factual or legal finding regarding any compliance or

noncompliance with the requirements of 386.570 RSMo. 2000 or any federal law, state law or Commission rule or order. This Stipulation is for settlement purposes only and by agreeing to this Stipulation and Agreement, AT&T does not admit or deny any wrongdoing, non-compliance, or violation of 386.570 RSMo. 2000 or any other law, rule or order in connection with the matters that are the subject of this Stipulation and Agreement.

2. AT&T agrees to provide to the Missouri National Guard two thousand (2000) AT&T Prepaid Calling Cards so that they can be distributed to the families of Missouri national guard reservists shown in the records of the Missouri National Guard as staged to go or deployed and on active duty in the country of Iraq as of December 15, 2004. Each AT&T Prepaid Calling Card permits calls within the U.S. for a total of approximately 186 minutes or international calls originating from the U.S. to Iraq up to a total sum of approximately 17 minutes. Any such international calls using these prepaid calling cards to be provided by AT&T may only originate in the U.S. and cannot be used to call from Iraq or anywhere else overseas to the United States. AT&T will provide these 2000 prepaid calling cards by delivering them either to the Commission's Staff to transmit to the Missouri National Guard, or directly to the Missouri National Guard so that the Missouri National Guard can distribute them to the families.

3. The Commission's Staff and AT&T desire to compromise and settle all issues between them raised by AT&T's erroneous billing of the \$3.95 monthly recurring charge to Missouri consumers beginning in or about January 2004, including but not limited to any alleged violations of Section 386.570 RSMo. 2000, other state law, Commission Rules and/or Commission Orders. Therefore, based on the representations and commitments made by AT&T herein, the Commission's Staff agrees that it will neither seek administrative penalties nor take

other enforcement actions against AT&T with regard to AT&T's erroneous billing of the \$3.95 monthly recurring charge to Missouri consumers that began in or about January 2004 and was rectified before the date of this Stipulation and Agreement. The contemporaneous settlement agreement between AT&T and the Missouri Attorney General under Missouri's merchandising practices laws, sections 407.010 RSMo. *et seq.*, referenced above resolves issues and complaints relating to the monthly recurring charge that were raised, or could have been raised, by the Missouri Attorney General.

4. AT&T represents that it has processed refunds or bill credits in the total amount of \$285,147 for the Missouri consumers that AT&T identified it billed the \$3.95 monthly recurring charge in error. AT&T further states that it sent letters of apology to Missouri consumers as part of AT&T's automatic adjustment process for the \$3.95 monthly recurring charge billing error.

5. AT&T represents that it has rectified the coding and systems processing errors that caused the monthly recurring charge billing errors and for those consumers billed in error as a result of the erroneous CARE provided by the LEC to AT&T, AT&T processed files of corrective CARE from the LEC.

6. Nothing in this Stipulation and Agreement shall alter AT&T's obligation to otherwise comply with the Commission's statutory and regulatory requirements.

7. In the event that AT&T merges or consolidates with or transfers its assets to another legal entity, AT&T and such other legal entity shall remain responsible for fully complying with the terms and conditions of this Stipulation and Agreement.

8. If requested by the Commission, a representative of AT&T will appear in any proceeding held by the Missouri Public Service Commission regarding this Stipulation and Agreement.

9. Compliance with all terms and conditions of this Stipulation and Agreement by AT&T shall be deemed a full release, accord and satisfaction of all liability for the aforementioned outstanding issues and AT&T shall be excused from further proceedings in this matter.

10. In the event that AT&T fails to comply with the terms and conditions of this Stipulation and Agreement, the Commission's Staff reserves the right to re-open this docket. AT&T shall pay any and all costs incurred by the Missouri Public Service Commission should it prevail in enforcing this Stipulation and Agreement.

11. This Stipulation and Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Stipulation and Agreement that are not fully expressed herein or attached hereto.

12. If any clause, provision or section of this Stipulation and Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Stipulation and Agreement and this Stipulation and Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, provision or section did not exist.

13. This Stipulation and Agreement has resulted from extensive negotiations among the parties and the terms hereof are interdependent. In the event the Commission does not adopt

this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding, and all stipulations are made without prejudice to the rights of the parties to take other positions in other proceedings.

14. This Stipulation and Agreement is being entered into for the purpose of disposing of all issues in this case.

15. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the signatory parties waive, with respect to the issues explicitly resolved herein: their respective rights pursuant to Section 536.070(2), RSMo 2000 to call, examine and cross-examine witnesses; their respective rights to present oral argument or written briefs pursuant to Section 536.080.1, RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 2000; their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510, RSMo 2000. The parties agree to cooperate with each other in presenting this Agreement to the Commission for approval, and will take no action, direct or indirect, in opposition to approval of this Agreement.

16. The Commission's Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the

extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

WHEREFORE, the following signatures are affixed hereto the dates below written.

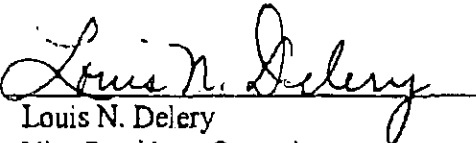
DANA K. JOYCE
General Counsel



By: Nathan Williams
Missouri Bar No.
nathan.williams@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8705 (Telephone)
(573) 751-9285 (Fax)

AT&T

By: 

Louis N. Delery
Vice President, Operations
340 Mt. Kemble Ave., Room
Morristown, New Jersey 07962

Date: 1/3/05